

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CANTOR : CIVIL ACTION
v. :
THE EQUITABLE LIFE ASSURANCE :
SOCIETY OF THE UNITED STATES NO. 97-5711

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

June 9, 1998

Plaintiff has filed this claim against The Equitable Life Assurance Society of the United States ("Equitable") alleging, inter alia, that Equitable acted in bad faith in the handling of plaintiff's disability claim. Presently before the court is plaintiff's motion to compel defendant's answers to interrogatories and document requests addressed to defendant (Document No. 5).¹

A. Claims Handling Policies and Procedures and Training Materials - Interrogatories Nos. 10 and 18, Request for Production Nos. 5, 8, 9, 10, 12, 17, and 18. By these various requests, plaintiff generally seeks information regarding Equitable's policy and procedures for claims handling and adjustor training. In response to these inquiries, Equitable has agreed to produce the claims handlers/ adjustors who are still employed by Equitable for deposition. Equitable has provided plaintiff with the names and addresses, where known, of all former employees identified by plaintiff who worked on plaintiff's claim in a material manner.

¹ Plaintiff's motion was referred to this court for disposition by the Honorable James McGirr Kelly by Order dated May 6, 1998.

Interrogatory No. 10 seeks information regarding Equitable's procedures for implementing "the standards set forth in the Pennsylvania Unfair Insurance Practices Act, Unfair Claims Settlement Practices Regulations, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law". Interrogatory No. 18 asks for a description of the experience and training of all Equitable employees who handled plaintiff's claim. Because plaintiff will be able to obtain all the information elicited by Interrogatories Nos. 10 and 18 through oral depositions, plaintiff need not answer these two interrogatories. See Fed. R. Civ. P. 26(b)(2) (court may prohibit discovery if the information can be obtained from a less burdensome source).

In Request for Production Nos. 8, 10 and 12, respectively, plaintiff seeks the following information: "[a]ny and all documents and memoranda that set forth the defendant's policy and procedures for accepting applications for disability policies and issuing a policy to an applicant", "[a]ny and all documents and memoranda that set forth the defendant's policy and procedures for denying and/or discontinuing disability claims and/or coverage to a claimant" and "[a]ll written policies, claims manuals, or other written communications setting forth [Equitable's] practices, procedures or policies regarding the handling of disability claims." This request is even broader than the request in Kaufman v. Nationwide Mut. Ins. Co., 1997 WL 703175, at * 2 (E.D. Pa. 1997), a case factually similar to the instant matter, which this court found to be overly broad and burdensome. However, this court also held in Kaufman that "some of the information contained in the manuals and newsletters is relevant to this action if it contains instructions concerning procedures used by [defendant's] employees in handling claims." Id., at *2 and *2 n.2. In this case, Equitable contends that it does not have "written policies, claims manuals, or other written communications setting forth [Equitable's] practices, procedures or

policies regarding the handling of disability claims”, responsive to Request for Production Nos. 10 or 12. Defendant explained that the application of set criteria is inappropriate in its business because the determination of whether an insurance claim is payable is based on the unique facts in each case. (Def.’s Mem. of Law Opp. Mot. at 5-6.) Consequently, the court finds that defendant has sufficiently responded to Request for Production Nos. 10 and 12.

Moreover, this court finds that the information requested in Request for Production No. 8, which concerns the issuance of disability policies as opposed to claims handling, will not lead to the discovery of admissible evidence. Therefore, Equitable need not respond to Request for Production No. 8.

Request for Production No. 5 asks that Equitable produce “[a]ny and all memoranda or correspondence between and regarding Dr. Gross and defendant.” Equitable maintains that it has no knowledge of a “Dr. Gross”, and further explains that “all correspondence to and from defendant is included in the claims file already produced to plaintiff.” (Def.’s Mem. of Law in Opp. to Mot. at 6 n.2.) Consequently, Equitable need not respond to Request for Production No. 5.

In Request for Production No. 9, plaintiff seeks “[a]ny and all documents and reports that form the basis of [Equitable’s] discontinuance of plaintiff’s claim.” Equitable states that it has produced the entire underwriting and claims file relating to plaintiff’s claim, including the files given to and maintained by independent medical examiners and field representatives, which numbers well over 1,200 pages. (Def.’s Mem. of Law Opp. Mot. at 5.) Equitable has complied with Request for Production No. 9.

Plaintiff seeks the following information in Request for Production No. 17: “[a]ll educational materials used in training ... those who were involved in the handling of plaintiff’s claim.” In its Memorandum of Law, Equitable explains that it will produce a three ring binder of orientation materials distributed by Paul Revere to former Equitable claims examiners who became employees of Paul Revere.² Equitable will produce the binder of materials under a confidentiality agreement which plaintiff has agreed to sign.

Equitable further asserts that training was held from time to time at which handouts are distributed, some of which are identical to Equitable materials. Equitable claims that Paul Revere has not maintained all of these materials in a central repository, nor does Equitable know the extent of such materials or to whom they were distributed. To the extent that Equitable is able to obtain any of these materials that pertain to procedures for handling claims, they should be produced to plaintiff. In all other respects, Equitable has responded to Request for Production No. 17.

B. Loss Reserve Records and Legal Opinions - Interrogatory No. 8,
Request for Production No. 18. Plaintiff seeks to compel Equitable to respond to the following: “Please identify the reserve amount and the rate of interest which the insurers have earned on the reserve in this matter” (Interrogatory No. 8), and produce “[w]ritten legal opinions from either in-house counsel or outside counsel regarding plaintiff’s claim and/or the decision to deny plaintiff’s claim, or any claims under a policy similar to the policy in this litigation, rendered prior to the filing of plaintiff’s suit.” (Request for Production No. 18.) With respect to

² In or about July, 1993, Paul Revere assumed the handling of claims arising under certain policies issued by Equitable. Approximately 20 Equitable claims examiners became employees of Paul Revere. (Def.’s Mem. of Law Opp. to Mot. at 6.)

Interrogatory No. 8, Equitable shall inform plaintiff of the reserve amount it has set in this case. See North River Ins. Co. v. Greater N.Y. Mut. Ins. Co., 872 F.Supp. 1411, 1412 (E.D. Pa. 1995) (amount of reserve set is relevant to bad faith action.) However, this court does not find that collateral information relating to the amount of reserves, such as the procedure for setting reserves or the interest rate Equitable has earned on the reserve for plaintiff's claim, will lead to the discovery of admissible evidence and, therefore, Equitable need not provide this information. See Fed. R. Civ. P. 26(b)(1); Kaufman, 1997 WL 703175, at *1. See also generally Rhone-Polenc Rorer, Inc. v. Home Indemnity Co., 139 F.R.D. 609, 613-15 (E.D. Pa. 1991).

With respect to Request for Production No. 18, all such legal opinions are protected by the attorney-client privilege. See Rhone-Polenc Rorer, Inc. v. Home Indemnity Co., 32 F.3d 851, 862 (3d Cir. 1994). See also 42 Pa. Con. Stat. Ann. §5928. The fact that plaintiff seeks this information only for the time period before the litigation was commenced makes no difference. Equitable need not respond to Request for Production No. 18.

C. Personnel Files - Request for Production No. 20. In Request for Production No. 20, plaintiff asks for the "resume and personnel file of each employee and/or agent of the insurer who made the decision to deny plaintiff's claim." Plaintiff maintains that he needs this information for two reasons. First, plaintiff argues that it is calculated to lead to admissible evidence regarding the inexperience and lack of training of Equitable's claims handlers. Second, plaintiff claims he needs to examine the files to obtain the witnesses' present addresses. As this court stated in Kaufman, "[o]ur court has recognized 'a heightened standard of relevance' for discovery of information contained in personnel files.'" Kaufman, 1997 WL 703175, at *1 (quoting Stabilus v. Haynsworth, Baldwin, Johnson and Greaves, P.A., 144 F.R.D.

258, 266 (E.D. Pa. 1992)). As in Kaufman, plaintiff can obtain this information from a less confidential source. Equitable has offered the claims handlers who worked on plaintiff's claim in a material way for deposition. Equitable claims that it has given plaintiff the last known addresses for those handlers who are no longer Equitable employees. Plaintiff argues that it does not have addresses for all of the former Equitable claims handlers, such as, but not limited to, Michael Monaco and Jacqueline Mallon. Equitable shall review its records and personnel files and provide plaintiff with the last known addresses for each witness listed on its witness list. Accordingly, Equitable need not produce the requested personnel files and resumes. See Fed. R. Civ. P. 26(b)(2).

D. Information Relating to Equitable's Pattern and Practice -

Interrogatories Nos. 15 and 22. Plaintiff seeks to compel Equitable to respond to the following: "[I]dentify all cases in which the insurer has requested physical or psychiatric examinations for insureds who suffered a disability for the past five years" (Interrogatory No. 15); and "[I]dentify by county, court, term and number each lawsuit and the outcome of each lawsuit brought against defendant alleging bad faith for the past five years." (Interrogatory No. 22.)

The court agrees with Equitable that these interrogatories are overly broad and burdensome. The issues before the court in this case are factually driven. Plaintiff has made no showing that cases regarding other insureds would be relevant. See Kaufman, 1997 WL 703175, at *2 (finding evidence of prior bad faith cases to be irrelevant). With respect to Interrogatory No. 22, plaintiff can obtain this information from Westlaw or Lexis. See Fed. R. Civ. P. 26(b)(2) (court may prohibit discovery if the information can be obtained from a less burdensome source).

See also Fidelity and Deposit Co. of Maryland v. McCullough, 168 F.R.D. 516, 525-26 (E.D. Pa. 1996) (“A few minutes on Westlaw or Lexis should suffice to locate any judicial opinions construing the Policy provisions at issue here.”) Accordingly, Equitable need not respond to Interrogatories 15 and 22.

E. Equitable’s Financial Status - Interrogatory No. 20, Request for Production No. 19. Plaintiff seeks the following information: “State for each of the last five fiscal years, the insurer’s net worth, gross assets, net income or loss, and net operating income or loss from the sale of policies similar to the policy that is the subject of plaintiff’s action” (Interrogatory No. 20); and “Reports of defendant’s financial condition submitted to any governmental agency concerned with the licensing or regulating of insurance.” (Request for Production No. 19.)³ Plaintiff argues that this information is relevant because he is seeking punitive damages. Equitable requests that this production be delayed until plaintiff has made a prima facie showing that he may recover punitive damages.

This court finds plaintiff’s requests to be overly broad and burdensome. Equitable shall produce to plaintiff a copy of its most recent financial statement that it regularly makes available to the public. In the event that this information proves to be insufficient, plaintiff may seek a court order compelling Equitable to produce additional information.

For all of the above reasons, plaintiff’s motion to compel is GRANTED IN PART and DENIED IN PART. An appropriate order follows.

³ Plaintiff claims that Interrogatory No. 8 also seeks information related to Equitable’s financial condition. This court has addressed Interrogatory No. 8 earlier in this Memorandum of Decision. See infra section B.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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| ALAN CANTOR | : | CIVIL ACTION |
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| THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES | : | NO. 97-5711 |

ORDER

AND NOW, this 9th day of June, 1998, for the reasons set forth in the accompanying Memorandum of Decision, it is hereby

ORDERED

that plaintiff's motion to compel defendant's answers to interrogatories and document requests addressed to defendant (Document No. 5) is GRANTED IN PART and DENIED IN PART.

Any information which defendant must produce, as directed in the court's Memorandum, must be sent to plaintiff within twenty (20) days from the date of this Order. In all other respects, the motion is DENIED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge